

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

CASE NO. 0S 2003-022

ORDER DENYING RESPONDENTS' MOTION FOR ATTORNEY FEES AND COSTS

**IN THE MATTER OF THE COMPLAINT FILED BY MAC WILLIAMS REGARDING
ALLEGED VIOLATIONS OF THE FAIR CAMPAIGN PRACTICES ACT BY RON TECK
AND FRIENDS OF RON TECK**

The hearing in this matter was held in Denver, Colorado, on November 6, 2003, before Deputy Chief Administrative Law Judge Marshall A. Snider. The Administrative Law Judge issued an Agency Decision on November 20, 2003. In that Agency Decision the Administrative Law Judge ruled against Complainant Mac Williams ("Williams") on all issues raised by the complaint and dismissed Williams' complaint.

In their Answer to Amended Complaint and at hearing Respondents requested attorney fees and costs. In the Agency Decision the Administrative Law Judge granted Respondents 20 days from the date of the Agency Decision to file any such request and supporting documents or argument. Williams was provided 20 days to respond.

Respondents filed a Motion for Attorney Fees and Costs and a Verified Bill of Costs on December 10, 2003. Williams filed a timely response. The matter is now before the Administrative Law Judge on Respondents' Motion for Attorney Fees and Costs.

The Fair Campaign Practices Act (Section 1-45-101, *et seq.*, C.R.S. (2003)) and Article XXVIII of the Colorado Constitution constitute the laws regulating campaign finance in Colorado. These constitutional and statutory provisions contemplate the strong enforcement of campaign finance laws and requirements. Colo. Const. art. XXVIII, sec. 1; Section 1-45-101, C.R.S. (2003). To a significant extent enforcement of the campaign finance laws is left to private citizens rather than to public officials; complaints prosecuted by persons who believe the law has been violated constitute a major element of the enforcement mechanism of these provisions. Colo. Const. art. XXVIII, secs. 9(2), 10.¹ An award of attorney fees and costs against a person who files and pursues a complaint under these laws could deter the strong enforcement of the campaign finance

1. See *In the Matter of the Complaint Filed by Mac Williams Regarding Alleged Violations of the Fair Campaign Practices Act by Colorado Association of Realtors; Colorado Association of Realtors, PSF, IPAC, CORPAC, RPAC and IMC*, Order Denying Motion for Award of Attorneys' Fees and Denying Award of Costs, Case No. OS 2003-001 (Administrative Law Judge Judith F. Schulman, August 7, 2003).

requirements. Accordingly, an award of fees and costs should not be made unless clearly warranted by the facts and the law.

In this case Respondents assert a right to fees and costs under Section 1-45-111.5(2), C.R.S. (2003). That section of the Fair Campaign Practices Act provides as follows:

The prevailing party in a private action brought to enforce the provisions of article XXVIII of the state constitution or of this article shall be entitled to the recovery of such party's reasonable attorney fees and costs.

The Administrative Law Judge concludes that Williams' complaint was not "a private action brought to enforce the provisions of article XXVIII of the state constitution or of this article", as that term is used in Section 111.5. Therefore, no fees and costs can be awarded under the authority asserted by Respondents.

The constitutional and statutory provisions regarding campaign finance make only one reference to "a private action". Colo. Const. art. XXVIII, sec. 9(2)(a) provides that written complaints of violations of the campaign finance laws are to filed with the Secretary of State, who must then refer the complaint to an administrative law judge. The decision of the administrative law judge may be enforced by the Secretary of State, or:

if the secretary of state does not file an enforcement action within thirty days of the decision, in a private cause of action by the person filing the complaint. A private action brought under this section shall be brought within one year of the date of the violation in state district court. The prevailing party in a private enforcement action shall be entitled to reasonable attorneys fees and costs.

Colo. Const. art. XXVIII, sec. 9(2)(a).

Thus, the "private action" referred to in Section 1-45-111.5(2), C.R.S. (2003) is the action of a person seeking to enforce the decision of an administrative law judge in court, not the administrative complaint proceeding before an administrative law judge. Section 1-45-111.5(2), C.R.S. (2003) therefore does not constitute statutory authority for an award of fees and costs in this case.²

It is therefore Ordered that:

2. Respondents do not claim that any other statute or rule grants the Administrative Law Judge the authority to enter an award of attorney fees and costs. Although their motion makes passing reference to being entitled to such an award pursuant to "statute and other doctrines identified herein", Respondents have not identified or argued any other specific statute or rule that supports their request.

1. Respondents Motion for Attorney Fees and Costs is denied.

2. Pursuant to the provisions of the Agency Decision entered by the Administrative Law Judge on November 20, 2003, the final order of the Administrative Law Judge pursuant to Colo. Const. art. XXVIII, sec. 9(2)(a) and Section 24-4-106 (11)(b), C.R.S. (2003) is deemed to have been entered on the date of this Order.

Dated: January_____, 2004

MARSHALL A. SNIDER
Deputy Chief Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that I have served a true and correct copy of the above **ORDER DENYING RESPONDENTS' MOTION FOR ATTORNEY FEES AND COSTS** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Mac Williams
P.O. Box 546
Clifton, CO 81520

Richard A. Westfall, Esq.
1430 Wynkoop Street
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Denver, CO 80202

William Hobbs
Deputy Secretary of State
1560 Broadway
Suite 200
Denver, CO 80202

on this ____ day of January, 2004

Secretary to Administrative Law Judge

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